

AMENDED IN SENATE JUNE 16, 2010  
AMENDED IN ASSEMBLY MAY 24, 2010  
AMENDED IN ASSEMBLY MAY 20, 2010  
AMENDED IN ASSEMBLY APRIL 8, 2010

CALIFORNIA LEGISLATURE—2009–10 REGULAR SESSION

**ASSEMBLY BILL**

**No. 2389**

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**Introduced by Assembly Member Gaines**

February 19, 2010

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An act to add Section 1367.49 to the Health and Safety Code, and to add Section 10133.64 to the Insurance Code, relating to health care coverage.

LEGISLATIVE COUNSEL'S DIGEST

AB 2389, as amended, Gaines. Health care coverage: provider contracts.

Existing law, the Knox-Keene Health Care Service Plan Act of 1975, provides for the licensure and regulation of health care service plans by the Department of Managed Health Care. Existing law also provides for the regulation of health insurers by the Department of Insurance. Existing law prohibits a contract between a plan or insurer and a health care provider from containing certain terms.

This bill would prohibit a contract by or on behalf of a plan or insurer and ~~a licensed hospital, as defined, or any other licensed health care facility, as defined, owned by a licensed hospital~~ *health care facility, as defined*, to provide inpatient hospital services or ambulatory care services to subscribers and enrollees of the plan or policyholders and insureds of the insurer from containing a provision that restricts the

ability of the plan or insurer to furnish information to subscribers or enrollees of the plan or policyholders or insureds of the insurer concerning the cost range of procedures at the ~~hospital or licensed health care facility~~ or the quality of services performed by the ~~hospital or facility~~. *The bill would require that the cost information be displayed in a specified manner and would prohibit a health care service plan from disclosing negotiated capitation rates or other prepaid arrangements to enrollees or subscribers in either the cost or quality information, except as specified. The bill would require a plan or insurer that furnishes the cost or quality information to also disclose the location of its facility quality measurements to subscribers, enrollees, policyholders, and insureds, and to make specified disclosures regarding those measurements. If the quality information is quality of care data developed and compiled by the plan or insurer, the bill would require plans and insurers to provide affected facilities an opportunity to review the information prior to furnishing it to subscribers, enrollees, policyholders, or insureds, as specified, and would also, among other things, require that the information be based on specified guidelines and be updated at appropriate intervals, as specified. The bill would make a contractual provision inconsistent with this requirement the bill's requirements void and unenforceable.*

Vote: majority. Appropriation: no. Fiscal committee: no.  
State-mandated local program: no.

*The people of the State of California do enact as follows:*

1     SECTION 1. Section 1367.49 is added to the Health and Safety  
2     Code, to read:  
3     1367.49. (a) A contract issued, amended, renewed, or delivered  
4     on or after January 1, 2011, by or on behalf of a health care service  
5     plan and a ~~licensed hospital or any other licensed health care~~  
6     ~~facility owned by a licensed hospital~~ *health care facility* to provide  
7     inpatient hospital services or ambulatory care services to  
8     subscribers and enrollees of the plan shall not contain any provision  
9     that restricts the ability of the health care service plan to furnish  
10    information to subscribers or enrollees of the plan concerning the  
11    cost range of procedures at the ~~hospital or the licensed health care~~  
12    ~~facility or the quality of services performed by the hospital or~~  
13    ~~facility~~.

1     ***(b) Information on the cost range of procedures furnished***  
2 *pursuant to subdivision (a) shall be displayed as an episode of*  
3 *care, unless an episode of care is not applicable, and may include,*  
4 *but shall not be limited to, applicable diagnostic tests, prescription*  
5 *drugs, hospital days, and medical supplies that are associated*  
6 *with a typical procedure or illness.*

7     ***(c) A health care service plan shall not disclose negotiated***  
8 *capitation rates or other prepaid arrangements in the information*  
9 *furnished to enrollees or subscribers pursuant to subdivision (a).*  
10 *However, if the health care service plan includes in that*  
11 *information allocated capitation payments to a health care facility*  
12 *for an episode of care, the plan and the facility shall consult on*  
13 *an appropriate and reasonable methodology formula.*

14     ***(d) If the information proposed to be furnished pursuant to***  
15 *subdivision (a) on the quality of services performed by a health*  
16 *care facility is quality of care data that the plan has developed*  
17 *and compiled, all of the following requirements shall be satisfied:*

18     ***(1) The information shall be based on nationally recognized***  
19 *evidence-based or consensus-based clinical recommendations or*  
20 *guidelines. When available, a plan shall use measures endorsed*  
21 *by the National Quality Forum or other entities whose work in the*  
22 *area of quality performance is generally accepted in the health*  
23 *care industry.*

24     ***(2) The plan shall utilize appropriate risk adjustment factors***  
25 *to account for different characteristics of the population, such as*  
26 *case mix, severity of patient's condition, comorbidities, outlier*  
27 *episodes, and other factors to account for differences in the use*  
28 *of health care resources among health care facilities.*

29     ***(3) The information, and the data used as the basis for that***  
30 *information, shall be updated at appropriate intervals, but not less*  
31 *than annually.*

32     ***(4) If the health care service plan is evaluating quality***  
33 *measurements for which it is also furnishing the cost range of*  
34 *procedures to its enrollees or subscribers, it shall link the two*  
35 *together for comparison purposes when appropriate.*

36     ***(5) The health care service plan shall, prior to furnishing the***  
37 *information to its enrollees or subscribers, provide all of the*  
38 *following to the affected health care facility:*

39     ***(A) At least 45-days written notice to review the information.***

1 (B) The criteria used in the development and evaluation of  
2 quality measurements and reasonable access to these criteria. The  
3 criteria shall be sufficiently detailed and reasonably  
4 understandable to allow the facility to verify the data against its  
5 records.

6 (C) An explanation to the facility that it has the right to correct  
7 errors and seek review of the data used to measure the quality of  
8 services provided at the facility.

9 (D) A reasonable, prompt, and transparent appeal process. If  
10 the facility makes an appeal prior to the expiration of the time  
11 period provided under subparagraph (A), the health care service  
12 plan shall make no changes to its current information about the  
13 facility until the appeal is completed.

14 (e) A health care service plan that furnishes information  
15 concerning the cost range of procedures at a health care facility  
16 or the quality of services provided by the facility to its subscribers  
17 or enrollees pursuant to subdivision (a) shall also disclose the  
18 following to its subscribers or enrollees:

19 (1) Where the plan's facility quality measurements can be found.

20 (2) That facility quality measurements provided by the plan are  
21 only a guide to choosing a facility, that enrollees or subscribers  
22 should confer with their existing facility before making a decision,  
23 and that these measurements have a risk of error and should not  
24 be the sole basis for selecting a facility.

25 (3) Information explaining the facility quality measurement  
26 process, including the basis upon which quality is measured and  
27 any limitation of the data used.

28 (4) Reasonable details on the factors and criteria used by the  
29 facility quality measurement system, including whether severity  
30 cost adjustments have been utilized.

31 (5) How an enrollee or subscriber may register a complaint  
32 about the plan's facility quality measurements or provide feedback  
33 on the quality measurement system.

34 ~~(b)~~

35 (f) Any contractual provision inconsistent with this section  
36 shall be void and unenforceable.

37 ~~(e)~~

38 (g) For purposes of this section, the following definitions apply:

39 (1) "Health care facility" means a licensed hospital or any  
40 other licensed health care facility owned by a licensed hospital.

(1)

(2) “Licensed hospital” has the same meaning as set forth in Section 4028 of the Business and Professions Code.

(2)

(3) “Licensed health care facility” means any institution or health facility, other than a long-term health care facility as defined pursuant to Section 1418, licensed by the State Department of Public Health to deliver or furnish health care services.

(d)

(h) Section 1390 shall not apply for purposes of this section.

SEC. 2. Section 10133.64 is added to the Insurance Code, to read:

10133.64. (a) A contract issued, amended, renewed, or delivered on or after January 1, 2011, by or on behalf of a health insurer and a ~~licensed hospital or any other licensed health care facility owned by a licensed hospital~~ health care facility to provide inpatient hospital services or ambulatory care services to policyholders and insureds of the insurer shall not contain any provision that restricts the ability of the health insurer to furnish information to policyholders or insureds concerning the cost range of procedures at the ~~hospital or the licensed~~ health care facility or the quality of services provided by the ~~hospital or~~ facility.

(b) *Information on the cost range of procedures furnished pursuant to subdivision (a) shall be displayed as an episode of care, unless an episode of care is not applicable, and may include, but shall not be limited to, applicable diagnostic tests, prescription drugs, hospital days, and medical supplies that are associated with a typical procedure or illness.*

(c) *If the information proposed to be furnished pursuant to subdivision (a) on the quality of services performed by a health care facility is quality of care data that the insurer has developed and compiled, all of the following requirements shall be satisfied:*

(1) *The information shall be based on nationally recognized evidence-based or consensus-based clinical recommendations or guidelines. When available, an insurer shall use measures endorsed by the National Quality Forum or other entities whose work in the area of quality performance is generally accepted in the health care industry.*

(2) *The insurer shall utilize appropriate risk adjustment factors to account for different characteristics of the population, such as*

1 case mix, severity of patient's condition, comorbidities, outlier  
2 episodes, and other factors to account for differences in the use  
3 of health care resources among health care facilities.

4 (3) The information, and the data used as the basis for that  
5 information, shall be updated at appropriate intervals, but not less  
6 than annually.

7 (4) If the health insurer is evaluating quality measurements for  
8 which it is also furnishing the cost range of procedures to its  
9 policyholders or insureds, it shall link the two together for  
10 comparison purposes when appropriate.

11 (5) The health insurer shall, prior to furnishing the information  
12 to its policyholders or insureds, provide all of the following to the  
13 affected health care facility:

14 (A) At least 45-days written notice to review the information.

15 (B) The criteria used in the development and evaluation of  
16 quality measurements and reasonable access to these criteria. The  
17 criteria shall be sufficiently detailed and reasonably  
18 understandable to allow the facility to verify the data against its  
19 records.

20 (C) An explanation to the facility that it has the right to correct  
21 errors and seek review of the data used to measure the quality of  
22 services provided at the facility.

23 (D) A reasonable, prompt, and transparent appeal process. If  
24 the facility makes an appeal prior to the expiration of the time  
25 period provided under subparagraph (A), the health insurer shall  
26 make no changes to its current information about the facility until  
27 the appeal is completed.

28 (d) A health insurer that furnishes information concerning the  
29 cost range of procedures at a health care facility or the quality of  
30 services provided by the facility to its policyholders or insureds  
31 pursuant to subdivision (a) shall also disclose the following to its  
32 policyholders or insureds:

33 (1) Where the insurer's facility quality measurements can be  
34 found.

35 (2) That facility quality measurements provided by the insurer  
36 are only a guide to choosing a facility, that policyholders or  
37 insureds should confer with their existing facility before making  
38 a decision, and that these measurements have a risk of error and  
39 should not be the sole basis for selecting a facility.

1     (3) *Information explaining the facility quality measurement*  
2     *process, including the basis upon which quality is measured and*  
3     *any limitation of the data used.*

4     (4) *Reasonable details on the factors and criteria used by the*  
5     *facility quality measurement system, including whether severity*  
6     *cost adjustments have been utilized.*

7     (5) *How a policyholder or insured may register a complaint*  
8     *about the insurer's facility quality measurements or provide*  
9     *feedback on the quality measurement system.*

10    ~~(b)~~

11    (e) Any contractual provision inconsistent with this section  
12    shall be void and unenforceable.

13    ~~(e)~~

14    (f) For purposes of this section, the following definitions apply:

15    (1) *"Health care facility" means a licensed hospital or any*  
16    *other licensed health care facility owned by a licensed hospital.*

17    ~~(1)~~

18    (2) "Licensed hospital" has the same meaning as set forth in  
19    Section 4028 of the Business and Professions Code.

20    ~~(2)~~

21    (3) "Licensed health care facility" means any institution or  
22    health facility, other than a long-term health care facility as defined  
23    pursuant to Section 1418 of the Health and Safety Code, licensed  
24    by the State Department of Public Health to deliver or furnish  
25    health care services.